

REMARKS

These remarks are in response to the office action mailed September 24, 2007. Claims 38 and 39 have been cancelled without prejudice to Applicant's right to prosecute the cancelled subject matter in any divisional, continuation, continuation-in-part, or other application. Claims 1, 15 and 24 have been amended. Support for the amendments to the claims can be found, for example, at paragraphs [0072]-[0073]. New claim 41 and 42 have been added. Support for the new claims can be found, for example, at paragraph [0073]. No new matters is believed to have been introduced.

I. REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

Claim 15 stands rejected as allegedly indefinite for recitation of the phrase, "such as". Applicant has amended claim 15 to remove recitation of the term. Accordingly, the rejection may be properly withdrawn.

II. REJECTION UNDER 35 U.S.C. §102

Claims 1-8, 10-12, 14 16-17 and 24 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Sullivan (Jacksonville Medicine). Applicant respectfully traverses this rejection.

Focused targeting and dosing of CNVs in the extrafoveal area eliminates the risk of visual damage through exposure of sensitive cones in the foveal area. The targeted methodology of the Applicant's claimed invention provides a benefit and reduced risk to a subject.

Sullivan does not teach or suggest (i) topical application of a photosensitizer, (ii) use of a high speed scanning laser ophthalmoscope, (iii) the use of indocyanine green, (iv) the use of non-coherent light, and/or (v) photodynamic therapy of an extrafoveal region or area. In addition, Sullivan does not teach or suggest photodynamic therapy using a dose that is about 4x the standard recognized dose of about 12 J/cm² (e.g., about 50 J/cm²).

In fact, Sullivan teaches away from such higher doses indicating that "the benefits of laser treatment are limited because laser photocoagulation damages the viable neurosensory retina. . ." (see, e.g., page 398 of Sullivan). Such neurosensory portions of the retina include the foveal area.

Thus, Sullivan does not teach each and every element of Applicant's claimed invention and in fact teaches away from the invention. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claims 1-8, 10-12, 14, 16-17 and 24 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by Levy *et al.* (U.S. Patent No. 5,798,349). Applicant respectfully traverses this rejection.

Focused targeting and dosing of CNVs in the extrafoveal area eliminates the risk of visual damage through exposure of sensitive cones in the foveal area. The targeted methodology of the Applicant's claimed invention provides a benefit and reduced risk to a subject.

Levy *et al.* do not teach or suggest (i) topical application of a photosensitizer, (ii) use of a high speed scanning laser ophthalmoscope, (iii) the use of indocyanine green, (iv) the use of non-coherent light, and/or targeting (e.g., identifying and exposing) choroidal neovascularization in the extrafoveal area. Thus, Levy *et al.* do not teach or suggest each and every element of Applicant's claimed invention. Accordingly, Applicants respectfully request withdrawal of the rejection.

III. REJECTION UNDER 35 U.S.C. §103

Claim 9 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Sullivan in view of Levy *et al.* (U.S. Patent No. 4,920,143). Applicant respectfully traverses this rejection.

The Examiner is respectfully reminded that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP §2143.03. Claim 9 is dependent upon claim 1. As addressed above, Sullivan, the primary reference, does not teach or suggest each and every element of Applicant's claimed invention. Levy *et al.* do not cure the deficiencies of the primary reference by providing any suggestion, motivation or the missing elements. Thus, the combination fails to teach or suggest each and every element of Applicant's claimed invention. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claim 9 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Levy *et al.* (U.S. Patent No. 5,798,349) in view of Levy *et al.* (U.S. Patent No. 4,920,143). Applicant respectfully traverses this rejection.

The Examiner is respectfully reminded that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP §2143.03. Claim 9 is dependent upon claim 1. As addressed above, Levy *et al.* (USP 5,798,349), the primary reference, does not teach or suggest each and every element of Applicant's claimed invention. Levy *et al.* (US 4,920,143) do not cure the deficiencies of the primary reference by providing any suggestion, motivation or the missing elements. Thus, the combination fails to teach or suggest each and every element of Applicant's claimed invention. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claims 13 and 15 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Sullivan in view of Roach (EyeNet Magazine, March 2001). Applicant respectfully traverses this rejection.

The Examiner is respectfully reminded that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP §2143.03. Claims 13 and 15 are dependent upon claim 1, either directly or indirectly. As addressed above, Sullivan, the primary reference, does not teach or suggest each and every element of Applicant's claimed invention. Roach does not cure the deficiencies of the primary reference by providing any suggestion, motivation or the missing elements. Thus, the combination fails to teach or suggest each and every element of Applicant's claimed invention. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claims 13 and 15 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Levy *et al.* (U.S. Patent No. 5,798,349) in view of Roach (EyeNet Magazine, March 2001). Applicant respectfully traverses this rejection.

The Examiner is respectfully reminded that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is

nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP §2143.03. Claims 13 and 15 are dependent upon claim 1, either directly or indirectly. As addressed above, Levy *et al.*, the primary reference, does not teach or suggest each and every element of Applicant's claimed invention. Roach does not cure the deficiencies of the primary reference by providing any suggestion, motivation or the missing elements. Thus, the combination fails to teach or suggest each and every element of Applicant's claimed invention. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claim 18 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Sullivan in view of LumaCare. Applicant respectfully traverses this rejection.

The Examiner is respectfully reminded that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP §2143.03. Claim 18 is dependent upon claim 1. As addressed above, Sullivan, the primary reference, does not teach or suggest each and every element of Applicant's claimed invention. LumaCare does not cure the deficiencies of the primary reference by providing any suggestion, motivation or the missing elements. Thus, the combination fails to teach or suggest each and every element of Applicant's claimed invention. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claim 18 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Levy *et al.* (US Patent No. 5,798,349) in view of LumaCare. Applicant respectfully traverses this rejection.

The Examiner is respectfully reminded that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP §2143.03. Claim 18 is dependent upon claim 1. As addressed above, Levy *et al.*, the primary reference, does not teach or suggest each and every element of Applicant's claimed invention. LumaCare does not cure the deficiencies of the primary reference by providing any suggestion, motivation or the missing elements. Thus, the combination fails to teach or suggest each and every element of

Applicant's claimed invention. Accordingly, Applicant respectfully requests withdrawal of the rejection.

For at least the foregoing, the Applicant submits that the claimed invention is patentable and request reconsideration and notice of such allowable subject matter.

A petition for a two-month Extension of Time, and associated fees, accompany the present Response. Should any additional fees be required, the Commissioner is authorized to charge deficiencies or credit any overpayment to Deposit Account No. 02-4800

The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY LLP

Date: February 12, 2008

By: /Joseph R. Baker, Jr./

Joseph R. Baker, Jr.

Registration No. 40,900

P.O. Box 1404
Alexandria, Virginia 22313-1404
(858) 509-7300